IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 603 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BHAGWANDAS MANUBHAI KATARA

Versus

KANTIBHAI GALJIBHAI PARMAR

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Appearance:

1. Criminal Revision Application No. 603 of 2001

MR LM CHHABLANI for Petitioner No. 1

MR VARSHAL PANCHOLI for Respondent No. 1-3

MR SJ DAVE, APP for Respondent No. 4

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 27/02/2003

ORAL JUDGEMENT

This is a revision application under Section 397 read with Section 401 of the Code of Criminal Procedure,

1973 (for short, "the Code") challenging an order dated 27/11/01 recorded by the learned Judicial Magistrate, First Class at Khedbrama (Vijaynagar) in Criminal Inquiry No. 16 of 2000 under which the learned Magistrate dismissed the said complaint of the present petitioner under Section 203 of the said Code.

2. The petitioner herein, filed a complaint before the said Court, mainly alleging that an amount of Rs.25050/- was received from the Government, for the purpose of distributing it, amongst the eligible students as scholarship. That the Head Master of the school was on leave, as he was not well and therefore, the said amount was accepted by the first respondent. The first respondent issued a receipt to that effect, on 4 5/7/1997 showing that the said amount was paid to the first respondent, for distributing it to the eligible students as scholarship. It is alleged that the first respondent did not distribute the said amount accordingly, and he, along with the two other respondents misappropriated the said amount and committed the offences punishable under Section 409 and 389 of IPC.

3. The trial court directed that an inquiry may be made under Section 202 of the said Code. During the course of inquiry, it seems that the learned advocate who represented the present petitioner was not present and the court itself had recorded the examination of the present petitioner.

4. It seems that though a bulk of documents including the aforesaid receipt dated 4 - 5/07/97 was produced, along with the complaint before the trial court these documents were not admitted in evidence and exhibited. This shows that because of the absence of the advocate for the complainant before the trial court and probably because of the fact that the petitioner was not aware about the procedural aspect, he did not refer those documents during the course of his evidence and therefore, those documents were not exhibited and admitted in evidence. However, the fact remains that the said receipt and other documents were produced by the petitioner - complainant before the trial court along with the complaint.

5. The learned advocate for the petitioner before this court has argued that because of the absence of the advocate and because of the ignorance of the petitioner, the documents were not produced, but they were actually presented to the court along with the complaint and therefore, atleast an opportunity may be given to the

petitioner to lead evidence and to satisfy the court about the existence of offence against the present respondents.

6. The learned advocate for the contesting respondents has argued that the respondent concerned was not in service in 1997, in the said school and he joined there only in the year 1998, and therefore, it was not possible for this respondent to collect the said amount and to issue the receipt for the same.

7. So far, the trial court is concerned, there is the evidence of the complainant and one Pravinsingh. Both have supported the case of the complainant as aforesaid. They have deposed, that Kalyansingh, was the Head Master of the said school and the said amount was raised by him. That, thereafter, he fell sick and was unable to move out of his bed. Therefore, he had requested the first respondent to get the amount and distribute the same amongst the eligible students as scholarship. Accordingly, Kalyansingh had paid the said amount to the first respondent and obtained receipt which is produced in original on record.

8. The said receipt in original is on record, but, on account of the aforesaid lack of knowledge of the petitioner, it has not been exhibited and admitted in evidence. Therefore, it could not be considered by the trial court.

9. Even other documents have also been produced along with the complaint, but they have not been exhibited and admitted in evidence during the course of the oral evidence of the said two witnesses.

10. Incidentally, the former Principal, Kalyansingh had passed away and the witness Pravinsingh, is the brother of the deceased who has clearly deposed that the deceased had paid the said amount to the first respondent and had obtained the receipt of the same.

11. Witness Pravinsingh has further deposed before the trial court that though the amount was paid to the first respondent, the Officers of the department told the family of deceased Kalyansingh that if the aforesaid amount is not deposited with the Government, then the pension case would not be cleared. Accordingly, under a compulsion, the said amount was deposited by the son of the deceased with the department concerned. This evidence is also required to be considered appropriately. At this stage, it is not possible for this Court to

observe anything on the merits of the case, but, it seems that when the advocate was engaged by the petitioner before the trial court and when he was not present, when the evidence of the petitioner and Pravinsingh was recorded and when on account of the absence of the advocate, documents could not be exhibited and admitted in evidence then in that event, this would be an appropriate case, wherein the said opportunity may be given to the petitioner to prove his case before the trial court.

12. In that view of the matter, this is a fit case for exercising revisional jurisdiction. Therefore, this revision application is allowed. The order passed by the trial court, dismissing the complaint of the petitioner under Section 203 of the said Code is ordered to be set aside. The matter is remanded to the trial court for proceeding ahead in accordance with law. Naturally, the trial court is expected to provide a reasonable opportunity to the petitioner to lead evidence and to produce and prove the documents in order to prove the case set out in the complaint.

13. The learned advocate for the petitioner appearing before the trial court as an advocate for the complainant, is also expected to remain present in the court, as and when the matter is fixed for hearing before the trial court, so that the petitioner may not again suffer on account of his absence before the trial court.

14. Mr.L M Chabblani learned advocate appearing for the petitioner undertakes to instruct the local advocate of the petitioner, to remain present before the trial court on each and every date fixed for hearing before the trial court. Rule is made absolute to the above extent.

(D. P. Buch, J.)

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